

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Citizens Telecommunications Company)	CC Docket No. 96-45
of North Dakota)	
)	
Red River Rural Telephone Association)	
and Red River Telecom, Inc.)	
)	
Polar Telecommunications, Inc.)	
)	
Dickey Rural Telephone Cooperative and)	
Dickey Rural Access, Inc.)	
)	
Joint Petition for Waiver of the Definition)	
of "Study Area" Contained in Part 36,)	
Appendix – Glossary of the Commission's)	
Rules)	
)	
Petition for Waiver of Section 61.41(c) & (d).)	
Section 69.3(e)(11) & 69.605(c) of the)	
Commission's Rules)	

**COMMENTS
OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (NTCA) hereby submits the following comments in response to the Commission's Public Notice released May 6, 2002, inviting comments on the above-captioned joint petition for waiver.

NTCA is a national association representing more than 500 independent rural incumbent local exchange carriers, including Red River Rural Telephone Association, and Red River Telecom, Inc. (collectively Red River),¹ Polar Telecommunications, Inc.

¹ Red River Telecom, Inc. is a North Dakota LEC that serves approximately 1,745 access lines. Red River Telecom, Inc. is a wholly-owned subsidiary of the Red River Rural Telephone Association, both are average schedule and issuing carriers in the NECA interstate access tariffs.

(Polar), and Dickey Rural Telephone Cooperative and Dickey Rural Access, Inc. (collectively Dickey Rural).² All NTCA members are classified as “rural telephone companies” under the Telecommunications Act of 1996 (Act).³

I. INTRODUCTION

In accordance with Commission rules, Citizens Telecommunications Company of North Dakota (Citizens) and Dickey Rural, Polar and Red River (collectively, “Petitioners”), have filed a joint petition seeking waivers to permit Citizens to sell the assets of its Wyndmere and Fairmount, North Dakota exchanges (approximately 649 and 379 access lines, respectively) to Red River, its Pembina, North Dakota exchange (approximately 635 access lines) to Polar, and its Gwinner and Lisbon, North Dakota exchanges (approximately 588 and 1,904 access lines, respectively) to Dickey Rural. The transaction will entail the deletion of the aforementioned exchanges from Citizens’ North Dakota exchanges and their addition to the existing North Dakota study areas of Dickey Rural, Polar and Red River.

Dickey Rural also seeks waiver of the Section 61.41(c) and (d) of the Commission’s rules so that it may remain under rate of return regulation once it has acquired the lines from Citizens. In addition, Polar and Red River seek waiver of the definition of “average schedule company” in Section 69.605(c) of the Commission’s rules. Dickey Rural, Polar and Red River also seek a waiver of Section 69.3(e)(11) of the Commission’s rules concerning participation in the NECA carrier common line tariff.

² Dickey Rural Access, Inc. is a North Dakota company created to purchase and operate the Gwinner and Lisbon exchanges from Citizens. Dickey Rural Access is a subsidiary of Dickey Rural Telephone Cooperative, which presently serves 21 exchanges with approximately 2,700 access lines in North Dakota. Dickey Rural Telephone Cooperative is a non-average schedule company and has never elected to operate pursuant to price cap regulation. The companies wish to continue to operate as non-average schedule companies after the acquisition of Citizens’ assets.

³ 47 U.S.C. §153(47).

Dickey Rural, Red River and Polar indicated they intend to continue to participate in the NECA common line and traffic sensitive pools after the acquisition of the exchanges.

II. THE COMMISSION SHOULD WAIVE ITS “STUDY AREA” DEFINITION

NTCA fully supports the joint petition. The Commission’s study area freeze should be waived. Part 36 of the Commission’s rules “freezes” the definition of “study area” to the boundaries which were in existence on November 15, 1984. In enacting the freeze, the Commission expressed concern that LECs would set up high cost exchanges within their territories as separate study areas to maximize high cost support.⁴

Recognizing that a freeze may not be appropriate in all circumstances, the Commission established a three-pronged test for deciding whether study area waivers should be granted. The Commission may approve waiver requests if it determines that: 1) the change will not affect adversely the USF support program; 2) the state commission having regulatory authority does not object to the change; and 3) the public interest supports grant of the waiver.⁵

As explained in the joint petition, the transactions satisfy the Commission’s three-pronged test. The transactions will have no adverse impact on the universal service program. Under Section 54.305(a) of the Commission’s rules, carriers purchasing high cost exchanges can only receive the same level of support per line as the seller received prior to the sale.⁶ Therefore Dickey Rural, Polar and Red River will receive the same

⁴ *In the Matter of MTS and WATS Market Structure, Amendment of Part 67 of the Commission’s Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72 and 80-286, 49 Fed. Reg. 48325, 48337 (Dec. 12 1984).

⁵ *In the Matter of US WEST Communications, Inc. and Eagle Telecommunications, Inc. Joint Petition for Waiver of the Definition of “Study Area” Contained in Part 36, Memorandum Opinion and Order*, 10 FCC Rcd 1771, 1772 (1995).

⁶ 47 C.F.R. §54.305.

amount of support that Citizens currently receives in these exchanges and this will not adversely impact universal service.

Red River, Dickey Rural and Polar each filed applications for a certificate of public convenience and necessity with the North Dakota Public Service Commission (NDPSC) on February 7, 2002. They requested that the NDPSC issue an order stating that it does not object to the grant of the study area waiver. In addition, Red River and Polar filed a similar request with the Minnesota Public Utilities Commission, since the exchanges they are acquiring from Citizens include some lines in Minnesota. Both state commissions have formally concluded that the transfer of exchanges is in the public interest.

The transactions are in the public interest. The acquiring companies are all established local exchange carriers with a proven record of providing high-quality telecommunications facilities and services to residents and businesses. The transactions will put the acquired access lines under the control of small, community oriented, local management and ownership. Dickey Rural, Red River and Polar each plan to offer advanced services, such as DSL, and an expanded list of vertical services. Specifically, Red River will offer customers voice mail, caller ID and selective call acceptance or rejection and it will expand its local calling area. Polar plans to offer enhanced data services, including ATM and frame relay, voice mail, call trace and preferred call forward, among others. Dickey Rural states it will offer customers new services as supported by customer demand.

III. THE COMMISSION SHOULD WAIVE THE “ALL OR NOTHING” AND “PERMANENT CHOICE” RULES

Dickey Rural also seeks waiver of the “All or Nothing” and “Permanent Choice” rules in Section 61.41(c) and (d) of the FCC’s rules to allow it to remain under rate of return regulation after acquiring the lines from Citizens. The Commission’s rules require that any non-average schedule company, when purchasing a price cap company or a portion of a price cap company, be subject to price caps.⁷ Additionally, Commission rules state that once a company has elected to be a price cap company, it must continue as such.⁸ In the absence of a waiver, Dickey Rural Telephone Cooperative, a non-average schedule, rate of return company, would be subject to interstate price cap regulation as an affiliate of Dickey Rural because Citizens is currently a price cap company.

The Commission declined to impose price cap regulation on all LECs acknowledging that it was not appropriate for smaller LECs.⁹ Dickey Rural is an NTCA member and a small, rural carrier, which the Commission previously determined is not appropriately regulated under price cap regulations. A waiver makes sense in this instance.

IV. THE COMMISSION SHOULD PERMIT RED RIVER AND POLAR TO RETAIN AVERAGE SCHEDULE STATUS

Red River and Polar seek waiver of Section 69.605(c) so that they may retain their average schedule status. Commission rules define an “average schedule company” as a telephone company participating in average schedule settlements on December 1, 1982” and precludes the creation of new average schedule companies or the conversion

⁷ 47 C.F.R. §61.41(c)(2) and (3). Also known as the “All or Nothing” rule.

⁸ 47 C.F.R. §61.41(d). Also known as the “Permanent Choice” rule.

⁹ *In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order*, 5 FCC Rcd 6786 (1990).

of cost companies to average schedule companies after that date without a waiver from the Commission. The Petitioners offer several examples of the Commission not even requiring waivers of Section 69.605(c) and others where waivers were granted to average schedule companies similar in size to Red River and Polar seeking to remain regulated under averages schedules when acquiring a comparable number of access lines from price cap carriers.

In its decision on *Jordan-Soldier Valley Telephone Company and Alpine Communications, L.C.*, the Commission outlined special circumstances for justifying waivers, including to ensure a smooth settlement process when average schedule companies acquire another company and the combined companies are going to merge into one average schedule study area.¹⁰ Red River and Polar are existing average schedule companies, and acquiring small rural exchanges that they wish to consolidate into their existing North Dakota study area and their existing corporate structure. Requiring Red River and Polar to convert to price cap regulation would be unduly burdensome for these small rural carriers and drain resources that would otherwise be utilized to maintain and upgrade services. Granting Polar and Red River a waiver of Section 69.605(c) of the Commission's rules is in the public interest.

V. PETITIONERS REQUEST FOR WAIVER OF SECTION 69.3(E)(11) SHOULD BE GRANTED

Finally, Dickey Rural, Red River and Polar each seek waiver of Section 69.3(e)(11) so that they may continue to utilize NECA as its tariff pool administrator. As pointed out in the petition, Section 69.3(e)(11) would preclude Dickey Rural, Polar and Red River from participating in the NECA common line tariff until the annual access

tariff effective date following consummation of the acquisition, approximately July 1, 2003. If this is the case, then the companies would be required to file interstate tariffs on their own, adding greatly to its costs and administrative burden. Petitioners state that the number of lines acquired in this transaction is minimal and would only have minimal impact on the NECA common line pool, nor would it add to the complexity of administering the long-term support (LTS) program. Dickey Rural, Polar and Red River therefore request that the Commission waive Section 69.3(e)(11) to the extent necessary to allow the Citizens exchanges to be added to their study areas and included in the NECA pools upon the closing date of the acquisition. Red River, Polar and Dickey should be granted the waivers so that they may receive the economic and administrative benefit of participating in the NECA pool.

VI. CONCLUSION

Petitioners have shown good cause for the grant of requested waivers. Red River, Polar and Dickey Rural are all established existing rate of return carriers with proven records of providing quality service to rural areas. The transfer of access lines from

¹⁰ *In the Matter of Jordan-Soldier Valley Telephone Company and Alpine Communications, L.C.*, CC Docket No. 96-45, DA 00-2473 (Acc. Pol. Div., rel. Nov. 3, 2000), ¶ 13.

Citizens to these small, rural, locally owned and managed companies will serve the public interest and lead to improved service for customers.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS
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CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in CC Docket No. 96-45, DA 02-1034 was served on this 5th of June 2002 by first-class, U.S. Mail, postage prepaid, to the following persons.

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